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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------|------------------|
| 10/726,336 | 12/01/2003 | David J. Zahniser | 2024738-7030163001 | 5486 |
| | 7590 | | (11.01) | |
| Bingham McCutchen, LLP Suite 1800 Three Embarcadero San Francisco, CA 94111-4067 | | | EXAMINER SMITH, ZANDRA V | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2877 | |

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/726,336 | Applicant(s) ZAHNISER ET AL. | |
| | Examiner Zandra V. Smith | Art Unit 2877 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-37 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 16-37 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 01/29/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Preliminary Amendment

The preliminary amendments filed 01 December 2003 and 05 March 2004 have been entered.

Information Disclosure Statement

The information disclosure statement filed 29 January 2004 has been placed in the application file, and the information referred to therein has been considered.

Claim Objections

Claim 32 is objected to because of the following informalities: the claim reads “at least one red LED and at least one red LED”. It appears that the claim should read “at least one red LED and at least one green LED”. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16-25, 29-32, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by *Ishihara et al. (5,791,345)*.

As to claims 16-20, 25, 29-32, Ishihara discloses a noninvasive blood analyzer, comprising:

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a light source having a first narrowband wavelength and a second differing narrowband wavelength (col. 18, lines 25-30), the light source including an array of green and an array of red LED's.

As to **claim 21**, Ishihara discloses everything claimed, as applied above, in addition the light source comprises an array of LED's including at least one green LED and at least one red LED (col. 18, lines 25-30).

As to **claim 22**, Ishihara discloses everything claimed, as applied above, in addition a third narrowband wavelength different from the first and second wavelengths is provided (blue, col. 18, line 28).

As to **claims 23-24**, Ishihara discloses everything claimed, as applied above, in addition the first wavelength range is 690 nm to 750 nm and the second wavelength is between 500 nm and 600 nm (col. 5, lines 1-6).

As to **claim 37**, Ishihara discloses a noninvasive blood analyzer, comprising:

a first array of one or more LEDs having a first narrowband wavelength, a second array of one or more LEDs having a second narrow band wavelength different from the first and a third array of one or more LEDs having a third narrowband wavelength different from the first and second (col. 18, lines 25-30).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-28 and 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ishihara et al. (5,791,345)* in view of *Wunderman et al. (6,122,042)*.

As to **claims 26-28, 33, 36**, Ishihara provides the first and second dies on a common substrate (see fig. 25-26) but fails to provide first and second die or a single die, however to do so is well known as taught by Wunderman. Wunderman discloses a system for optically identifying characteristics that includes LED's attached to a die or multiple dies (fig. 2b and 6a). It would have been obvious to one having ordinary skill in the art at the time of invention to mount the LED's on a first and second die or a single die to provide a power supply means.

As to **claims 34-35**, Ishihara and Wunderman disclose everything claimed, as applied above, in addition multiple red and green LEDs are provided (col. 18, lines 25-30).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

De Man (5,498,879) discloses an apparatus for optical recognition of documents that includes a light source having a first narrowband wavelength and a second differing narrowband wavelength.

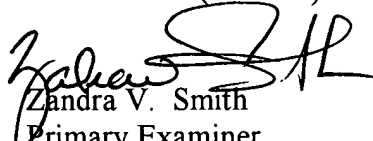
Fax/Telephone Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zandra V. Smith whose telephone number is (571) 272-2429. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Zandra V. Smith
Primary Examiner
Art Unit 2877

November 22, 2004